

MEMORANDUM

TO: **Real Estate & Transportation Committee**
 Commissioner Bill Read, Chairman
 Commissioner Phillip Walker
 Commissioner Scott Franklin

FROM: City Attorney's Office

DATE: July 6, 2020

RE: **Acquisition and Redevelopment Agreement with FURC1,
 LLC for the Sale and Development of 313 & 321 N.
 Massachusetts Avenue**

The Community Redevelopment Agency (CRA) owns 313 & 321 N. Massachusetts Ave. The parcels encompass about a quarter of a city block and consist of approximately 0.40 acres. The site is situated in an ideal location in the north Downtown area along the Massachusetts Avenue corridor and was recently identified as a key catalyst site in the Downtown Lakeland Vision. The property is bounded by Oak Street to the north, property formerly housing the Greyhound bus station to the south and single and multi-family development to the east. The CRA purchased the property in 2006 for \$560,000 and subsequently demolished the structures on the property. The combination of demolition, abatement and purchase costs are close to \$700,000.

In March 2019, in response to written interest from multiple developers, the CRA Advisory Board recommended disposition of the property. A notice of disposition was issued in accordance with statutory requirements and a selection committee comprised of senior City leadership and representatives of the CRA and LDDA was formed to review proposals. Upon expiration of the proposal deadline, the sole proposal received was from FURC1, LLC (FURC1). FURC1 owns property adjacent to the CRA's property, as well as the entire block immediately north of Oak Street, less City right-of-way. FURC1 is actively pursuing the Greyhound property to the south for inclusion in their development.

On April 26, 2019, the Selection Committee met and voted unanimously in favor of recommending negotiation of a purchase price and development agreement with FURC1. At its May 2019 meeting, the CRA Advisory Board unanimously agreed with the Selection Committee's recommendation. Subsequently, on May 20, 2019, the City Commission, as the Community Redevelopment Agency, unanimously granted City and CRA staff permission to begin negotiation of the terms of a development agreement with FURC1, which would be brought back to Commission for approval.

Material terms of the development agreement are as follows:

Development Agreement Summary Table	
Item	Term
Master Project Description	156,900 square feet of multi-family residential, retail or office space, or any combination thereof.
	Ten percent (10%) deviation from total SF is permissible.
North Massachusetts Ave. Redevelopment Project (CRA Property Specific)	29,200 square feet of multi-family residential, retail or office space, or any combination thereof (Phase I of the Master Project only)
Deposit	\$10,000
	The deposit shall be applied to purchase price at closing If agreement is terminated, the deposit shall be disbursed.
Due Diligence	Due Diligence (90) days from the Effective Date.
	(1) thirty (30) day extension of the inspection period
Closing Conditions	Proof of financial commitment
	Approved Permits in Hand
	Construction contract and contractor Schedule in hand
	FURC shall have acquired the Greyhound Property.
	Closing shall occur within 30 days of satisfying conditions but not more than 12 months with 3 (30 day) extensions at no charge to FURC.
Purchase Price	\$200,000
Incentives	50% TIF for 5 years if construction is complete within 18 months of closing.
	5-year TIF extension for Phase I of the project if Master Project is complete within 36 months of certificate of occupancy of Phase I.
	Phases II and III eligible for 50% TIF for 5 years provided the term does not extend beyond the life of the Downtown CRA.
	\$144,000 or \$4.93/SF
Additional Terms	FURC or its lessees shall have access to the lesser of fifty (50) parking spaces or four percent (4%) of the total parking spaces in the City Parking Garage (if ever located on the LPD site) and shall make lease payments, at market rate, to the City for each leased parking space in accordance with the adopted rate schedule for the City Parking Garage then in effect. The City's obligation to lease the parking spaces is contingent upon FURC's completion of the "Master Project."
Construction Commencement	Within thirty (30) calendar days after the Closing Date

Overall, the project would add 156,900 square feet of mixed-use space, with an estimated taxable value of over \$25,000,000, to the Massachusetts Avenue corridor.

It is recommended that the City Commission, as the City's Community Redevelopment Agency, enter into the attached Development Agreement with FURC1, LLC and authorize the appropriate CRA officials to execute the Agreement.

Attachment

ACQUISITION AND REDEVELOPMENT AGREEMENT

THIS ACQUISITION AND REDEVELOPMENT AGREEMENT (this “Agreement”) is entered into as of the ____ day of _____, 2020 (the “Effective Date”), by and between the City of Lakeland, a Florida municipal corporation (the “City”), the Lakeland Community Redevelopment Agency, a public body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes (the “CRA”), and FURC1, LLC, a Florida limited liability company (“FURC”).

RECITALS

WHEREAS, the CRA is the owner of certain property known as the “North Massachusetts Avenue Redevelopment Property,” with an address of 313 N. Massachusetts Avenue and 0 E. Oak Street, Lakeland, Florida 33801, as legally described on Exhibit A, attached hereto and incorporated herein (the “Property”); and

WHEREAS, the CRA desires that the Property be redeveloped for multi-family residential, retail and office use, or any combination thereof, consistent with the aesthetic of downtown Lakeland, and in furtherance of the CRA’s Downtown Community Redevelopment Plan (the “Master Plan”), and the Florida Community Redevelopment Act of 1969, Florida Statutes, Chapter 163; and

WHEREAS, on March 12, 2019, the CRA issued a Notice of Intent to Dispose of Community Redevelopment Agency Property (the “RFP”). FURC responded to the RFP with a Response to CRA RFP, N. Massachusetts Properties (the “RFP Response”), and the CRA selected FURC as the developer with which to negotiate an agreement at its public meeting on May 20, 2019; and

WHEREAS, the City and CRA find this economic development opportunity to be in the best interest of City and the health, safety and welfare of the citizens of Lakeland, have offered to facilitate the downtown redevelopment project by providing certain economic incentives to FURC, with the expectation that City’s and CRA’s involvement will encourage and accelerate the timing of the redevelopment, thus generating additional tax revenues, benefiting the downtown economy and enhancing the potential for future development; and

WHEREAS, the City and CRA find that City and CRA’s provision of the economic incentives set forth in this Agreement constitutes a public purpose, and the Florida Legislature has found that government sponsored public-private arrangements and the promotion and support, including financial assistance, of economic development activities are in the public interest and achieve a public benefit; and

WHEREAS, the parties hereto have agreed to memorialize the terms and conditions through which the CRA shall convey the Property to FURC and FURC shall redevelop the Property;

NOW, THEREFORE, in consideration of the foregoing matters, which are incorporated herein by reference, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by all parties, the parties hereto agree as follows:

1. **Recitals.** The Recitals set forth above are true and correct and are hereby incorporated in this Agreement.
2. **Definitions.** In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:
 - A. *City Code* - The Land Development Code of City of Lakeland.
 - B. *Development Order* – Site plan approval, and other necessary approvals and permits, including, but not limited to, the issuance of a building permit or similar action by City and all other government entities with jurisdiction over the Project necessary for FURC to develop and construct the Project on the Property pursuant to the requirements of this Agreement.
 - C. *Downtown Oak Project* – Except as otherwise provided herein, Phases II and III of the Master Project, as shown on the Conceptual Plan (Exhibit “B”), consisting of 127,700 square feet of multi-family residential, retail or office space, or any combination thereof.
 - D. *Escrow Agent* – Abel A. Putnam, Esq., Putnam, Creighton & Airth, P.A., P.O. Box 3545, Lakeland, Florida 33802-3545.
 - E. *Master Project* – the North Massachusetts Avenue Redevelopment Project and the Downtown Oak Project collectively. Only the North Massachusetts Avenue Redevelopment Project will be developed pursuant to this Agreement.
 - F. *North Massachusetts Avenue Redevelopment Project or Project* - Except as otherwise provided herein, 29,200 square feet of multi-family residential, retail or office space, or any combination thereof (Phase I of the Master Project only), as generally consistent with the Conceptual Plan (Exhibit B). The name of the Project may be changed in the sole discretion of FURC.
 - G. *Project Plans* - The site plan and other applications necessary to obtain a building permit and other development approvals for the Project to be submitted by FURC to City.
3. **Purpose.** The purpose of this Agreement is to provide for the redevelopment of the Property in accordance with Section 11, so as to enhance the quality of life and the aesthetic and useful enjoyment of the Lakeland downtown area, fulfill the goals of the

RFP, promote economic development and investment in the downtown area, and further the objectives of the Master Plan.

4. **Purchase and Sale.** The CRA agrees to sell and convey the Property to FURC, and FURC agrees to purchase the Property from the CRA, pursuant to the terms and conditions set forth in this Agreement. Prior to the end of the Inspection Period, the CRA and FURC agree to amend the legal description of the Property, if needed, as set forth on **Exhibit A** to a mutually agreeable legal description of the Property to be set forth on the Survey.
5. **Purchase Price.** The Purchase Price for the Property shall be the Appraised Value of Two Hundred Thousand and No/100 Dollars (\$200,000.00).
6. **Deposits.**
 - A. In order to secure the performance by FURC in accordance with this Agreement, on or before three (3) business days after the Effective Date, FURC shall deliver a deposit to Escrow Agent in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) (the "Deposit").
 - B. The Deposit will be held by Escrow Agent in an institution the deposits of which are insured by an agency of the United States and disbursed in accordance with this Agreement. The Deposit will be placed in a trust account upon receipt by Escrow Agent. Escrow Agent shall not be liable for any funds lost in connection with the take-over or failure of any bank or financial institution wherein Escrow Agent has deposited those funds. Escrow Agent shall deposit the funds in a single account at a bank or financial institution selected by Escrow Agent in its commercially reasonable discretion and shall have no obligation to split such funds into multiple accounts to stay within Federal Deposit Insurance Corporation insurance limits on each account. The Deposit shall be applied to and credited against the Purchase Price at Closing, and, in the case of a termination of this Agreement, the Deposit shall be disbursed as provided herein.
7. **Inspection Period.** FURC shall have ninety (90) days from the Effective Date to conduct due diligence activities on the Property. FURC, its agents, representatives and consultants, shall have the right to enter the Property, with prior notice to the CRA, for the purposes of inspecting the same, including without limitation, for the purposes of conducting soil tests, soil borings and groundwater tests, performing surveys, environmental audits and inspections (including digging, boring and taking soil samples), and other invasive testing, performing physical facility inspections, and for such other purposes as shall be appropriate, in the judgment of FURC in order to determine whether, in FURC's sole discretion, the Property is suitable for the intended use. FURC shall be entitled to bring such equipment and vehicles onto the Property as are necessary to perform the activities described herein. In addition, FURC shall have the right to make such other investigations with respect to the Property, including, without limitation,

investigations relating to zoning, land use, availability of utilities and the like, as FURC may deem to be appropriate in making the determination of whether or not the Property is suitable for the intended use of developing the Project. FURC shall indemnify, defend, and hold the CRA and City harmless from any and all liabilities, claims and damages arising out of the rights granted to FURC in this Section, which covenant shall survive the closing or the earlier termination of this Agreement for a period not to exceed the greater of four (4) years or the applicable statute of limitations for any claim brought against the CRA or City as a result of FURC's exercise of its rights under this Section; provided however, this indemnity shall not apply to existing site conditions on the Property or the intentional or negligent acts or omissions of the City or CRA, of the City or CRA's employees, consultants or agents or any third party acting on behalf of the City or CRA. Prior to entering the Property pursuant to this Section, FURC shall obtain and maintain in effect at its expense the following insurance with respect to the Property: (i) a comprehensive general liability insurance policy naming the CRA and the City as additional insureds and having limits of at least One Million and 00/100 Dollars (\$1,000,000.00) for injury, death or property damage per occurrence; (ii) business auto liability coverage, which shall cover any automobile for bodily injury and property damage arising out of ownership, maintenance or use, including owned, non-owned and hired automobiles and employee non-ownership use. The limits of such policy shall be no less than Five Hundred Thousand (\$500,000.00), single limit per occurrence, and the CRA and City shall be listed as additional insureds; and (iii) workers' compensation coverage at statutory limits, if applicable. All policies shall be written on an occurrence basis. In the event FURC does not purchase the Property, FURC shall repair any damage to the Property caused by FURC's exercise of its rights under this Section and otherwise restore the Property to the condition existing prior to the Inspection Period, which covenant shall survive the termination of this Agreement. On or before the end of the Inspection Period, FURC may, in its sole discretion, terminate this Agreement in writing, and any deposits shall be returned to FURC, and neither party shall have any further liability under this Agreement, except as otherwise expressly provided in this Agreement. In the event FURC does not terminate this Agreement on or before the end of the Inspection Period, the Deposit shall become non-refundable, except in the event of a City or CRA default under this Agreement. FURC shall be entitled to one (1) thirty (30) day extension of the Inspection Period as more fully provided by Section 14.

8. **Property AS IS, WHERE IS Condition.** FURC ACKNOWLEDGES AND AGREES THAT UPON CLOSING, CRA SHALL SELL AND CONVEY, AND FURC SHALL ACCEPT, THE PROPERTY "AS IS, WHERE IS," WITH ALL FAULTS, AND THERE ARE NO ORAL OR WRITTEN AGREEMENTS, WARRANTIES, OR REPRESENTATIONS (EXCEPT AS SPECIFICALLY PROVIDED HEREIN), COLLATERAL TO OR AFFECTING THE PROPERTY BY CRA, ANY AGENT OF CRA OR ANY THIRD PARTY ACTING FOR OR ON BEHALF OF CRA.
9. **Title Insurance.** Within ten (10) days of the Effective Date of this Agreement, FURC, at its expense, shall obtain a title insurance commitment as to the Property (the "Title Commitment"), from a nationally-recognized title insurance company (the "Title

Company”), together with legible copies of the deed(s) vesting title to the Property in the CRA and of all documents or instruments referenced in Schedule B-Section 1 and Schedule B-Section 2 of the Title Commitment (collectively, the “Back-up Documents”), and committing to issue to FURC an owner’s policy of title insurance in the amount of the Purchase Price upon the recording of the special warranty deed from the CRA to FURC. FURC shall deliver a copy of the Title Commitment and Back-up Documents to CRA on or before the fifteenth (15th) day after the Effective Date. Title to the Property as reflected by the Title Commitment and owner’s/lender’s policies issued pursuant thereto shall be subject only to ad valorem real property taxes for the year of the Closing which are not yet due or payable, and such other title exception matters set forth in Schedule B-Section 2 of the Title Commitment that are either (a) not included in FURC’s Title Defect Notice (as defined below), or (b) having been identified in any timely Title Defect Notice, have thereafter been waived or deemed to have been waived by FURC in accordance with the terms and conditions set forth below (collectively the “Permitted Exceptions”). The Title Commitment shall further agree to insure any and all easements benefiting the Property. The Title Commitment shall provide that, in the event the Closing Agent receives or obtains all of the certificates, affidavits, surveys, and other matters required under Schedule B - Section 1 of the Title Commitment which are necessary in order to satisfy of record any “Monetary Liens” (as defined below in this Section 9), to insure the “gap” between the effective date of the Title Commitment and the recording of the special warranty deed conveying the Property from the CRA to FURC, and to delete the “standard exceptions”, then such Monetary Liens and the “standard exceptions” (including standard exceptions for taxes and assessments not shown in the Public Records, claims of unrecorded easements, parties other than owner in possession, mechanic’s liens and matters disclosed on the Survey, but excluding current real estate taxes not yet due and payable) shall be deleted from the title insurance policy when issued and the “gap” shall be insured at Closing. The CRA shall provide to the Title Company on or before Closing any affidavits, undertakings and other instruments reasonably required to delete said Monetary Liens, and standard exceptions, to insure the “gap”, and to satisfy or comply with any requirements specified in Schedule B - Section 1 of the Title Commitment applicable to the CRA. FURC shall have to and until fifteen (15) days prior to the end of the Inspection Period within which to review the Title Commitment and the Survey (defined below). In the event FURC finds the Title Commitment and/or the Survey (as defined below) to contain any matter, requirement or exception which is objectionable to FURC (a “Title Defect”), FURC shall give written notice to the CRA of FURC’s objection(s) (the “Title Defect Notice”) on or before fifteen (15) days prior to the expiration of the Inspection Period. The CRA shall thereupon promptly use diligent, good faith efforts to cure said Title Defect(s). If the CRA is unable to cure all Title Defects within the Inspection Period, it shall give prompt written notice to FURC of those non-monetary Title Defects which the CRA is unable to or elects not to cure (“No Cure Notice”) no later than five (5) days prior to the end of the Inspection Period, whereupon FURC shall have the option, exercisable by written notice of such election (the “Election Notice”) provided to the CRA within five (5) days of receipt of the No Cure Notice, either to (a) extend the time for the

CRA to cure said Title Defects, (b) waive the remaining Title Defects, and such matters shall become Permitted Exceptions, or (c) terminate this Agreement, in which event the Deposits (if any) shall be refunded to FURC and thereafter the parties shall have no further obligation or liability hereunder, except as otherwise provided by this Agreement. The Title Commitment shall be updated by endorsement ("Update Endorsement"), which endorsement, together with copies of any additional matters identified therein, shall be provided to the CRA by FURC prior to Closing. If any Update Endorsement discloses any new requirement, defect, encumbrance or other adverse matter that is not a Permitted Exception, then FURC shall notify the CRA in writing specifying the new Title Defect. The CRA shall have a period of ten (10) days, or other reasonable time, but not more than thirty (30) days if such matters cannot be reasonably cured within said ten (10) day period, following the receipt of such notice from FURC to cure such new Title Defect and, if necessary, the applicable Closing Date shall be extended accordingly as provided above. The CRA agrees to use diligent, good faith best efforts to attempt to remove all Title Defects, as provided above. If the CRA fails to cure any such new Title Defect within the time periods set forth herein, then such new defect shall constitute a default and FURC shall have the remedies provided in this Section. Notwithstanding anything contained herein to the contrary, on or before Closing, the CRA shall be obligated to satisfy and release of record, and to pay all amounts necessary to obtain such satisfaction and release, all monetary liens encumbering the Property (collectively, "Monetary Liens"). For the avoidance of doubt, following the Effective Date of this Agreement the CRA will not convey all or any portion of the Property, or further encumber the Property with any easements, leases, restrictions or other encumbrances, nor shall the CRA enter into any contracts to do so. Likewise, from and after the Effective Date of this Agreement, the CRA will not physically alter the Property.

10. **Survey of Property.** FURC may obtain, at FURC's sole cost and expense, a current survey of the Property, and which such survey is reasonably acceptable to the Title Company for the purpose of insuring FURC's title policy over all survey-based exceptions (the "Survey"). The Survey shall: (a) locate all present and future easements, rights of way, 100-year flood plain, building lines, utility lines, roadways and encroachments on the Property; and (b) contain an accurate metes and bounds description of the Property. In the event the Survey reflects any encroachments, lack of access, deficiencies, gaps or gores or hiatus between the Property and any adjoining streets or roads, or any other matters which would constitute a title defect, in FURC's discretion ("Survey Matters"), FURC shall notify the CRA of FURC's objections to the Survey on or before fifteen (15) days prior to the expiration of the Inspection Period. Objections to the Survey shall be treated as Title Defects pursuant to Section 9 above.
11. **Redevelopment of the Property.** Subject to the conditions of this Agreement and receipt of all Development Orders required for the Project, FURC shall develop the Project on the Property generally consistent with the Conceptual Development Plan, attached hereto and incorporated herein as **Exhibit B** (the "Conceptual Plan"), except as otherwise provided by this Agreement. FURC shall undertake the redevelopment at its sole cost and

expense, except as otherwise provided in this Agreement. The parties agree to timely process and amend this Agreement to substitute the site development plan approved by the City for the Conceptual Plan.

- A. Right to Market. During the term of this Agreement and any extension thereof, FURC shall have the exclusive right to market the Property for sale or lease generally consistent with the Conceptual Plan, and to seek any Development Order associated with the development of the Project which is generally consistent with the Conceptual Plan for the Project. CRA shall not, during the term of this Agreement, market the Property or attempt to sell or lease the Property.
- B. Redevelopment Program for the Property. FURC shall develop the Project on the Property generally consistent with the Conceptual Plan, and the provisions of this Section.
 - 1. It is anticipated that the Master Project shall be developed in multiple phases and the Property is only involved in Phase I of the Master Project. The North Massachusetts Avenue Redevelopment Project (Phase I) will consist of a minimum of 29,200 square feet of multi-family residential, retail or office space, or any combination thereof.
 - 2. The Master Project will consist of approximately 156,900 square feet of new construction. If a parking variance is ultimately required to meet the City Code, the CRA will work with FURC to provide such variance or otherwise work with FURC to resolve any parking issues.
 - 3. The reference to square feet of the Master Project set forth in subsection B.2 above is approximate only. FURC may, during the development review process, change the size of the Master Project, subject to the CRA's approval during the development review process, which such approval shall not be unreasonably withheld, conditioned or delayed. The withholding, conditioning or delaying of approval of a change of square footage of the Master Project in excess of ten percent (10%) shall not be considered unreasonable. Notwithstanding the above, the parties acknowledge and agree that the CRA's review and approval authority over Phases II and III of the Master Project shall only be required for the purpose of establishing FURC's eligibility for incentives under this Agreement. Development review and approval of Phases II and III of the Master Project shall otherwise be subject to the City's standard development review and approval processes for property similarly situated.
 - 4. FURC has or will obtain all state and local permits or other governmental authorizations and approvals required by law in order to proceed with the development of the Project, subject to the fee waivers contemplated under this Agreement.

5. FURC shall develop the North Massachusetts Avenue Redevelopment Project as a high-quality multi-family residential, retail and/or office development project. The City and CRA shall have final review and approval authority over the building elevations and exterior materials and color schemes for the Project, including any changes to such plans. The Project shall also be subject to review by the Lakeland Downtown Development Authority (LDDA).
6. Subject to Force Majeure delays, FURC shall commence construction of the Project within thirty (30) calendar days after the Closing Date.

12. **Closing Conditions.**

- A. **FURC Closing Conditions.** The obligation of FURC to purchase the Property is subject to the satisfaction as of the Closing Date of the following conditions precedent, any or all of which may be waived in whole or in part by FURC at or prior to the Closing:
 1. The representations and warranties of the City and CRA set forth herein shall be true and correct as of the Effective Date and on the Closing Date, and the City and CRA shall have fully performed and complied with all covenants and agreements of the City and CRA set forth herein which were to have been performed prior to Closing; and
 2. The City and CRA shall have tendered performance of all their obligations and covenants to be performed at Closing under this Agreement; and
 3. The Title Company shall be irrevocably committed to endorsing or “marking up” the Title Commitment at Closing so as to insure title to the Property as being vested in FURC, to delete all requirements from Schedule B, Section 1, to delete the standard exceptions from Schedule B, Section 2 (subject to FURC providing the Survey), to revise the effective date of the Title Commitment to be through the date and time of the recording of the special warranty deed conveying title to FURC, to insure the “gap” between the effective date of the Title Commitment and the recording of such special warranty deed, all subject to no exceptions other than the Permitted Exceptions, and shall be prepared to issue a final title insurance policy (the “Title Policy”) promptly after the Closing; and
 4. FURC has received a firm commitment letter acceptable to FURC, in its sole and absolute discretion, for a construction loan from an acceptable lender, and such lender has issued a rate lock and agreed to fund this transaction; and

5. FURC shall have received all necessary public and private approvals and permits, including the receipt of a building permit for the Project and any and all appeal periods related to such approvals or permits have expired; and
6. There shall be no litigation affecting the Property, or any portion thereof; and
7. There shall have been no material adverse change to the physical condition of the Property as it existed on the Effective Date; and
8. The site development plan approved by the City for the Project shall be substantially consistent with the Conceptual Plan or otherwise acceptable to FURC.
9. FURC shall have acquired fee simple title to that certain real property assigned Parcel No. 24-28-18-201000-001030 by the Polk County Property Appraiser, the legal description of which is: Lot C, Block 1 of Munn's Survey of Lakeland, Florida, according to the plat thereof as recorded in Deed Book G, Page 392, Public Records of Polk County, Florida (the "Greyhound Property").

B. CRA Closing Conditions. The obligation of the CRA to sell the Property is subject to the satisfaction as of the Closing Date of the following conditions precedent, any or all of which may be waived in whole or in part by the CRA at or prior to the Closing:

1. The representations and warranties of FURC set forth herein shall be true and correct as of the Effective Date and on the Closing Date, and FURC shall have fully performed and complied with all covenants and agreements of FURC set forth herein which were to have been performed prior to Closing; and
2. FURC shall have tendered performance of all its obligations and covenants to be performed at Closing under this Agreement; and
3. FURC shall have received all necessary public and private approvals and permits necessary to construct the Project on the Property, including the receipt of a building permit for the Project, and any and all appeal periods related to such approvals or permits have expired; and
4. The Project's general contractor shall have provided an estimate of Project construction costs and a binding contract for the construction of the Project shall be in effect between FURC and the Project's general contractor; and
5. FURC shall have provided written proof of a binding financing commitment from a lending institution, private lender or equity group to finance the construction of the Project, evidencing that the Project has been financed in amounts sufficient to commence and complete construction of the Project in accordance with the terms and conditions of this Agreement and the general

contractor's construction cost estimate, and further indicating that the lending institution, private lender or equity group will close on the construction loan for the Project simultaneously with or prior to the CRA's conveyance of the Property; and

6. FURC and FURC's general contractor shall have provided a joint written statement certifying that Project construction will commence on the thirtieth (30th) calendar day following the Closing Date.

C. Failure of Conditions. In the event that any of the conditions set forth in this Section 12 above are not satisfied by the party responsible for their satisfaction (the "Responsible Party") or waived in writing by the non-responsible party (the "Non-Responsible Party") prior to the Closing, the Non-Responsible Party shall have the option of: (i) terminating this Agreement by delivery of a written termination notice to the Responsible Party on or before the Closing Date, in which event the parties thereafter shall have no further rights or obligations to each other under this Agreement, except as otherwise expressly set forth in this Agreement; (ii) waiving such unsatisfied conditions precedent and proceeding with the Closing; or (iii) if the failure of any conditions precedent is due to or constitutes a default on the part of the Responsible Party, to declare a default on the part of the Responsible Party and to proceed in accordance with Section 19 below; provided, however, the failure of FURC to obtain all necessary permits and approvals to construct the Project shall not constitute a default provided FURC has exercised all commercially reasonable efforts to obtain them.

13. Closing. Unless otherwise agreed to by the parties in writing, the closing date for conveyance of the Property shall occur within thirty (30) days following the satisfaction of all the Closing Conditions set forth in Section 12, but no later than twelve (12) months following the Effective Date, unless otherwise extended as provided herein (the "Closing Date"). The CRA shall convey the Property to FURC pursuant to a special warranty deed conveying to FURC marketable fee simple title to the Property free and clear of all liens and encumbrances, subject only to the Permitted Exceptions, together with any negotiated easements for the Project; ad valorem real property taxes for the year of closing and subsequent years; and those matters which are approved in writing by FURC. CRA shall pay all the real estate transfer taxes applicable to the conveyance of the Property (including documentary stamp taxes and surtaxes). The CRA shall pay the costs of clearing title in accordance with Section 9 and recording any curative instruments. FURC shall pay for the cost of the title insurance commitment, and the owner's title policy. FURC shall pay for the recording of the deed and all expenses associated with any financing. Each party shall pay its respective attorney's fees.

14. Extensions. FURC shall be entitled to extend the deadlines set forth in Section 7 (Inspection Period) for one (1) thirty (30) day period and Section 13 (Closing) for up to three (3) thirty (30) day periods, at no cost to FURC. FURC shall request such extension in

writing not less than ten (10) calendar days prior to the expiration of any such deadline. The CRA Manager shall automatically approve any extension request in writing, so long as it complies with the terms of this Section. The extensions set forth above shall not require formal amendment of this Agreement. Except as provided in this Section or except as may be otherwise provided in this Agreement, there shall be no other extension of any performance obligation except through formal amendment of this Agreement in writing approved by the parties.

15. **Additional City and CRA Obligations/Redevelopment Incentives.** In consideration of FURC undertaking the Project, the City and CRA shall undertake the actions set forth in this Section. Unless otherwise provided below, the City and CRA shall undertake such actions at their sole cost.

A. **Joinder and Applications.** The CRA, as owner of the Property during the entitlement process, shall join in any application for development orders, variances or other approvals required for the Project, as well as any applications related to the Redevelopment Programs, including, but not limited to, applications for final site plan, plat approval, construction plans and stormwater permits.

B. **Redevelopment Incentives.**

1. Provided FURC completes the Project within eighteen months (18) months of the Closing Date, as evidenced by the issuance of certificates of occupancy for all components of the Project, the CRA shall provide tax increment financing (TIF) to FURC in accordance with the CRA's standard tax increment financing terms and conditions, including the rebate of fifty percent (50%) of the tax increment revenue generated by the Property following Project completion for a maximum of five (5) years. For such calculation, reassessment of the Property by the Polk County Property Appraiser shall be based upon the first year immediately following the year in which the Project is completed (the "Base Year"). FURC's obligation to complete the Project within eighteen (18) months of the Closing Date as a condition of its entitlement to receive tax increment financing shall be extended in accordance with Section 21 for events of Force Majeure. In addition to the above TIF incentive, should FURC complete the Master Project within thirty-six (36) months of certificate of occupancy of Phase I, then FURC shall be entitled to an additional five (5) years of tax increment financing upon the same terms and conditions as the initial five (5) years of tax increment financing provided above. This additional TIF incentive shall only apply to that portion of the project identified herein as Phase I. Furthermore, the CRA shall provide tax increment financing (TIF) to FURC in accordance with the CRA's standard tax increment financing terms and conditions, including the rebate of fifty percent (50%) of the tax increment revenue generated by the Property following Project completion for a

maximum of five (5) years for Phases II and III of the Master Project. Notwithstanding the foregoing, however, the CRA's obligation to make TIF payments shall not survive the life of the Downtown Community Redevelopment Area.

2. City and CRA shall provide plan review, permits, and inspections, and shall pay, waive or otherwise satisfy before same shall become due any related fees on behalf of, and at no cost to, FURC, including without limitation: site plan review fees; development order fees; building permit, plumbing, electrical, mechanical and site inspection fees; fees related to the review of documents necessary to plat any portion of the Property; and water, sewer, solid waste, fire and transportation impact and concurrency fees for the Project.
 - C. Other Obligations. The CRA shall provide temporary construction easements for the construction of the Project. The CRA shall maintain the Property in its current condition during the term of this Agreement prior to conveyance of the Property.
 - D. CRA Cooperation. CRA shall exercise its best efforts and cooperate with FURC in submitting and obtaining any state and federal licenses, permits, and governmental authorizations necessary to the completion of the Project; provided, however, all costs associated therewith shall be the sole responsibility of FURC, except those referenced in Section 15.B.2. This Agreement shall not affect City's right and authority to act in regulatory matters in accordance with applicable laws or ordinances.
 - E. No Merger. The terms and conditions of this Agreement shall survive the closing of the Property or any Parcel thereof and shall not be merged into the Deed for the Property or any Parcel thereof.
 - F. Redevelopment Incentives Cap. Notwithstanding anything contained in this Agreement to the contrary, the City's and the CRA's total obligation to pay, waive, satisfy or otherwise contribute towards the fees and costs associated with the design, permitting, construction and development of the Project shall be capped at \$4.93 per square foot, not to exceed a total sum of \$144,000. Tax increment financing payments shall not be included within said cap.
16. **Additional Enhancement Improvements by the City.**
- A. City Parking Garage. The City and FURC acknowledge and agree that the City is studying the feasibility of constructing a multi-story parking garage structure (the "City Parking Garage") on what is currently a surface parking lot on the south side of E. Bay Street, between N. Iowa Avenue and N. Vermont Avenue. The City acknowledges and agrees that the aesthetics and operation of the City Parking Garage will have a significant effect on the Project.

FURC or its lessees shall have access to the lesser of fifty (50) parking spaces or four percent (4%) of the total parking spaces in the City Parking Garage and shall make lease payments, at market rate, to the City for each leased parking space in accordance with the adopted rate schedule for the City Parking Garage then in effect. The City's obligation to lease the parking spaces is contingent upon FURC's completion of the "Master Project." Nothing herein shall obligate the City or CRA to construct the City Parking Garage.

17. **Covenants, Warranties and Representations of the City and CRA.** The City and CRA covenant, represent and warrant to FURC, as of the Effective Date and as of the Closing Date, as follows:

- A. Except as otherwise provided in this Agreement, the City and CRA are not making and specifically disclaim any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties or representations as to matters of title, tax consequences, or physical or environmental conditions, affecting the Property, including, without limitation, the value, condition, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose of the Property. FURC agrees that with respect to the Property, FURC has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty of the City or CRA (except as expressly set forth in this Agreement) or any agent of the City or CRA. FURC represents that it is a knowledgeable purchaser of real estate and that it is relying solely on its own expertise and that of FURC's consultants, and that FURC will conduct such inspections and investigations of the Property, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same.
- B. This Agreement and each document contemplated hereby to which the City and CRA will be a party has been authorized and will be executed and delivered by the City and CRA and neither their execution and delivery, nor compliance with the terms and provisions: (i) requires the approval and consent of any other party, except as have been obtained or as specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City or CRA, or (iii) contravenes or results in any breach of, default under or creation of any lien or encumbrance on the City or CRA.
- C. This Agreement and each document contemplated to which the City and CRA will be a party, will constitute a legal, valid and binding obligation of the City and CRA enforceable against the City and CRA in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.

- D. The City and CRA shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of the City and CRA.
 - E. The City and CRA shall not violate any applicable laws, ordinances, rules, regulations, orders, contracts, or agreements, or to the extent permitted by law, enact or adopt any ordinance, regulations or order or approve or enter into any agreement, that will result in this Agreement or any part hereof, or any other instrument contemplated, to be in violation thereof.
 - F. The City and CRA shall discharge, vacate, or release any lien, encumbrance, easement, right-of-way or other property interest the City or CRA has or owns on or in the Property (other than those arising under this Agreement) on or before the Closing of this transaction; provided, that neither the City nor the CRA shall have any obligation to discharge, vacate or release any easement, right-of-way or other property interest that is necessary for the provision of public utility service to property other than the Property until replacement easements, right-of-way or other property interests are in place that will ensure no interruption of public utility service to property other than the Property.
 - G. The City and CRA represent that, to the best of their knowledge, the Property is not on any "Superfund" list under any applicable Environmental Law, nor is the Property currently subject to any lien related to any environmental matter. Except as specifically set forth herein, the City and CRA make no other representations or warranties, expressed or implied, concerning the environmental condition of the Property.
18. **Representations and Warranties of FURC.** FURC hereby represents and warrants the following to the City and CRA:
- A. FURC is a validly existing limited liability company under the laws of the State of Florida, has all requisite power and authority to carry on its business, to own and hold property, to enter into and perform its obligations under this Agreement and consents to service of process on its registered agent in Florida.
 - B. This Agreement and each document to which FURC is or will be a party has been authorized and will be executed and delivered by FURC and neither their execution and delivery, nor compliance with the terms and provisions: (i) requires the approval and consent of any other party, except as have been obtained or as specifically noted herein, (ii) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on FURC, or (iii) results in any default or the creation of any lien on the property or assets of FURC which will have a material adverse effect on its ability to perform its obligations hereunder.

- C. This Agreement and each document contemplated to which FURC will be a party, will constitute a legal, valid and binding obligation of FURC enforceable against FURC in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights and subject to usual equitable principles if equitable remedies are involved.
 - D. To the knowledge of FURC, there is no suit, litigation or action pending or threatened against FURC, which questions the validity of this Agreement or which will have a material adverse effect on its ability to perform its obligations hereunder.
 - E. During the period the obligations of FURC are in effect, FURC shall cause to continue to be in effect those instruments, documents, certificates and events contemplated by this Agreement that are applicable to and the responsibility of FURC.
 - F. FURC shall promptly notify the CRA Manager in writing of any actual or reasonably anticipated delays in the application, approvals by City or other agencies and/or in the construction of the Project.
19. **Default.** Prior to declaring a default hereunder, the non-defaulting party must provide the defaulting party with written notice and at least ten (10) days to cure such default; provided, however, if the default is of a nature that cannot be reasonably cured within such 10-day period, then the defaulting party shall be allowed a reasonable period of time to cure such default provided that it diligently commences the cure within the 10-day period and thereafter diligently undertakes and pursues such cure. Notwithstanding the foregoing, neither party shall be held in default of this Agreement for any delay or failure of such party in performing its obligations pursuant to this Agreement if such delay or failure is caused by Force Majeure as defined in Section 21. Notwithstanding the above, no prior notice or opportunity to cure need be provided if a party fails to close on the Property as and when required by Section 13. If a default occurs and is not cured within any permitted curative period, or no opportunity to cure is required, the non-defaulting party may terminate this Agreement, institute an action to compel specific performance, except the City and CRA are expressly prohibited from pursuing Specific Performance against FURC, or to recover damages as applicable, suspend its own performance hereunder, or pursue any other remedy available at law or equity. The specified rights and remedies to which City, CRA and FURC are entitled under this Agreement are not exclusive and are intended to be in addition to any other means of redress which City, CRA or FURC may have. The foregoing notwithstanding, under no circumstances will City, CRA or FURC be liable for consequential damages, including lost profits, the right to such damages being expressly waived.

20. **Agreement to Run with Property.** This Agreement shall run with the Property and any portion thereof. This Agreement, and any amendments hereto, shall be binding upon and inure to the benefit of, and be enforceable by, the City, CRA and FURC, and their respective successors and assigns.
21. **Force Majeure.** Delays in performance due to: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability or shortage of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; act of God; or delays in governmental approvals not due to FURC's actions or omissions, shall be deemed events of "Force Majeure" and such delays shall be excused in the manner herein provided. If a party is delayed in any work pursuant to this Agreement due to the occurrence of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party, except for the incurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.
22. **Notice.**
- A. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing (including faxed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, faxed, or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by notice complying with the terms of this Section:
1. For the City and CRA: Alis Drumgo, CRA Manager, 228 S. Massachusetts Avenue, Lakeland, FL 33801; with copy to: Palmer Davis, Esq., Office of the City Attorney, City of Lakeland, 228 S. Massachusetts Avenue, Lakeland, FL 33801.
 2. For FURC: Gregory Fancelli, 415 Miramar Road, Lakeland, FL, 33803; with a copy to: James Edwards, 837 Johnson Avenue, Lakeland, FL 33801.
- B. Each such notice shall be deemed delivered: on the date of delivery if by personal delivery; on the date of facsimile transmission if by facsimile; and if the notice is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; (b) the date upon which delivery is refused; (c) the date upon which notice is designated by the postal authorities as not delivered; or (d) the third business day after mailing. Notwithstanding the foregoing, service by personal delivery delivered, or by facsimile sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday. If a notice is

delivered by multiple means, the notice shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.

23. **Assignment.** FURC shall be entitled to assign its rights and obligations under this Agreement to a parent, subsidiary, or affiliated entity in which FURC or Gregory Fancelli is a majority member or majority interest holder, including but not limited to, a single-asset entity or joint venture entity. Any other assignment shall require the written consent of the CRA, which may be withheld or conditioned by the CRA in its sole discretion. FURC shall provide notice of a permitted assignment to the CRA prior to the closing of the Project. The Notice of Assignment shall provide all information to the CRA sufficient for CRA to verify that the assignment is a permitted assignment under this Section. Upon the CRA's confirmation that the assignment is a permitted assignment, the CRA Manager shall be authorized to execute a document acknowledging CRA's acceptance of such assignment. Upon any assignment, the rights and obligations contained herein shall be binding on successors in interest to the Property, and the terms and conditions of this Agreement shall bind and inure to the benefit of the parties hereto and any respective successors and assigns.
24. **City's Police Powers.** Nothing in this Agreement shall serve to affect or limit the City's police powers in the exercise of rezoning decisions or other governmental action associated with the proposed redevelopment of the Property or any development order associated therewith.
25. **Sovereign Immunity.** Notwithstanding any other provision set forth in this Agreement, nothing contained in this Agreement shall be construed as a waiver of either the City's or the CRA's right to sovereign immunity under Section 768.28, Florida Statutes, or other limitations imposed on the City's or the CRA's potential liability under state or federal law. As such, neither the City nor the CRA shall be liable under this Agreement for punitive damages or interest for the period before judgment. Further, neither the City nor the CRA shall be liable for any claim or judgment, or portion thereof, to any one person of more than Two Hundred Thousand Dollars (\$200,000.00), or any claim or judgment, or portion thereof, which, when totaled with all other claims or judgments paid by the State or its agencies and subdivisions arising out of the same incident or occurrence, exceeds the sum of Three Hundred Thousand Dollars (\$300,000.00). This Section shall survive termination of this Agreement.
26. **Resolving any Invalidity.** The City, CRA and FURC hereby agree that in the event this Agreement or the economic incentives described herein are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the invalidity or pursue a valid alternative means to secure a substantially similar and equitable financial arrangement which the parties acknowledge was the inducement for FURC undertaking the Project. Notwithstanding anything in this Agreement to the contrary, in the event of any challenge to this Agreement or any portion thereof by a third party, including litigation, appeals,

administrative actions or any other legal or equitable action, the affected dates for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days until such litigation, appeals, administrative action, or any other legal or equitable action has been fully resolved (including any applicable appeal periods).

27. **Amendments.** Except as otherwise provided by Section 14 and Section 34, this Agreement may not be amended, supplemented, waived, or changed orally but only by a writing making specific reference to this Agreement signed by the party as to whom enforcement of any such amendment, supplement, waiver or modification is sought.
28. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
29. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.
30. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture among City, CRA and FURC. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that the other party hereto is not acting as a fiduciary for nor as an adviser to it in respect of this Agreement.
31. **Personal Liability.** No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), director, employee or agent of City, CRA or FURC in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of FURC, City or CRA hereunder.
32. **Exclusive Venue.** The parties agree that the exclusive venue for any litigation, suit, action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, shall be in the state courts in Polk County, Florida or the federal district court in Tampa.
33. **JURY WAIVER.** EACH PARTY HEREBY COVENANTS AND AGREES THAT IN ANY LITIGATION, SUIT, ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION

AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

34. **Recording.** CRA shall, at its own expense, record this Agreement after Closing, or a certified copy thereof, in the Public Records of Polk County, Florida and City and CRA shall subordinate the provisions thereof to FURC's mortgage lender, except that any such subordination shall not materially diminish the rights or remedies available to the City or CRA under this Agreement, whether with respect to FURC, FURC's mortgage lender or any other successor or assign deriving its rights by or through FURC. The parties shall agree to the form of the Subordination Agreement within the first ninety (90) days of the Inspection Period and shall timely process an amendment to this Agreement to attach such Subordination form as an exhibit. The City Attorney is authorized to execute such amendment, without further approval from the City or the CRA.
35. **Counterparts; Copies.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which shall together constitute one and the same instrument. Additionally, signed facsimiles shall have the same force and effect as a signed original, and, in lieu of an original, any party hereto may use a photocopy of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.
36. **Language.** Whenever used in this Agreement: the singular form of a term or phrase shall include the plural and the plural of a term or phrase shall include the singular, and the use of any gender shall include all genders where the context permits; references to Sections shall include all subsections (and other divisions) thereunder; the word "or" may be read "and," if the context permits or requires it; and the words "include," "includes," "including" shall be deemed to be followed by the phrase "without limitation."
37. **Attorney's Fees.** In any legal action or other proceeding (including, without limitation, appeals or bankruptcy proceedings) whether at law or in equity, which: arises out of, concerns, or relates to this Agreement, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby; or is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs, incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

38. **Successors and Assigns.** All covenants, agreements, warranties, representations, and conditions contained in this Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
39. **Waiver.** A failure to assert any rights or remedies available to a party under the terms of this Agreement shall not be deemed a waiver of such rights or remedies, and a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.
40. **Construction of Agreement.** Each party acknowledges that all parties to this Agreement participated equally in the drafting of this Agreement and that it was negotiated at arm's length. Accordingly, no court construing this Agreement shall construe it more strongly against one party than another.
41. **Exhibits.** Any exhibits attached to this Agreement shall, by this reference, be incorporated into this Agreement.
42. **Further Action.** Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of the obligations hereunder and to carry out the intent of the parties hereto.
43. **Time.** Time is of the essence of all the provisions and terms of this Agreement.
44. **No Pledge of Full Faith and Credit.** Neither the CRA's nor the City's obligations hereunder constitute, nor shall they be deemed to constitute, a general obligation of City, nor do they constitute a pledge of the full faith and credit of the City within the meaning of the Constitution and laws of the State of Florida. They shall be binding obligations only to the extent that the CRA and City have funds available to meet them.
45. **Entire Understanding.** This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings or agreements made by and between the parties.

WHEREFORE, the parties have executed this Agreement on the Effective Date set forth above.

THE CITY:

ATTEST:

**City of Lakeland,
a Florida municipal corporation**

Kelly S. Koos, City Clerk

H. William Mutz, Mayor

Approved as to form and correctness:

Palmer C. Davis, City Attorney

ATTEST:

CRA

Kelly S. Koos, City Clerk

By:

H. William Mutz, CRA Chairman

Approved as to form and correctness:

Palmer C. Davis, City Attorney

FURC:

**FURC1, LLC,
a Florida limited liability company**

By: _____
Gregory Fancelli

Exhibit A
Legal Description of Property

Parcel 1 – 313 N. Massachusetts Avenue - 24-28-18-201000-001022

MUNNS SURVEY DB G PG 392 BLK 1 LOT B S1/3

Parcel 2 – 0 E. Oak Street - 24-28-18-201000-001021

MUNNS SURVEY DB G PG 392 BLK 1 LOT B N2/3

Exhibit B Conceptual Plan



Furc1, LLC

DOWNTOWN OAK

N

WMB-ROI
(visualization)